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UNITED STATES DISTRICT COURT
Honorable Stanley A. Bastian

United States,

Plaintiff,

v.

Andrei S. Borgheriu,

Defendant.

No. 4:22-cr-06040-SAB

Defense Supplemental Trial Brief

I. SUMMARY

The core of this case, as originally briefed (*see* ECF No. 76, *Defense Trial Brief*), remains unchanged. Mr. Borgheriu honestly applied for and accepted a loan from the SBA during the COVID pandemic, as did millions of other Americans. He did so fully intending to comply with the terms and conditions of the loan. He did not scheme to defraud. He made no material misstatements or misrepresentations.

II. STATE OF THE EVIDENCE

1. Stipulations: The parties have reached limited stipulations regarding exhibits. The defense will separately brief its objections regarding the credit report offered by the government.

2. Parties' Expectations on Payroll Protection Plan Evidence: Mr. Borgheriu also received a Payroll Protection Plan loan from the Small Business Administration. The United States and Defense have conferred and do not anticipate the PPP loan to be an issue in either party's case in chief. Both sides understand that the issue could be revisited depending on the course of trial and agree to raise the issue with one another if the evidence is deemed to become relevant.

3. Joint Handling on Order Granting in Part and Denying in Part the United States' Motion in Limine. *See* ECF No. 64. The parties agree that it is best to handle any issues regarding this *Order* outside the presence of the jury. Counsel may ask the Court for a sidebar should a party believe that witness examinations or exhibits

1 implicate the Court's previous ruling.

2 **III. OBJECTIONS TO EXPECTED GOVERNMENT OPENING, CLOSING,**
3 **AND EXAMINATIONS**

4 1. Misstatements of Law and Contract: The initial defense trial brief requested a
5 ruling from the Court precluding the United States from any manner of questioning or
6 argument that changes the express terms of any contractual document. Mr. Borgheriu
7 cannot defraud a contract whose terms have changed or been explained after the fact.

8 2. No Variance from or Constructive Amendment of the Indictment: The initial
9 defense brief noted concerns with the United States' apparent effort to vary from the
10 indictment. That issue has gained greater significance in light of the United States'
11 response brief to the defense *Motion to Dismiss*. See ECF No. 117, pg. 11. The United
12 States seems to backtrack from a fraud in the inducement theory, even though the
13 indictment patently alleges such a theory. The Court must prohibit the United States
14 from making any argument that varies from its theory as set out in the indictment.
15 The defense's proposed supplemental jury instructions are necessary to reinforce that
16 the jury is not allowed to consider any theory other than that presented in the
17 indictment. See ECF No. 134, *Defense Supp. Jury Instructions*, pg. 4, lines 10-14.

1 Dated: February 3, 2025.

2 Federal Defenders of Eastern Washington & Idaho
3 Attorneys for Andrei S. Borgheriu

4 s/Justin P. Lonergan

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8 SERVICE CERTIFICATE

9 I certify that on February 3, 2025, I electronically filed the foregoing with the
10 Clerk of the Court using the CM/ECF System, which will notify Assistant United
11 States Attorneys Frieda Zimmerman and Jeremy Kelley.

12 s/Justin P. Lonergan

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